IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8428 OF 2005

Pyarali Hirji Hamid ..Petitioner.

Vs.

P. J. Thankappan & Ors. ..Respondents.

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Mr. V.Y. Sanglikar for the Petitioner.
Mr. V. Jaganath h/f Mr. B.H. Vyas for the Respondents.
Respondent Nos.1 and 2 present in Court.

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CORAM: DR. D.Y. CHANDRACHUD, J.

27th June, 2006.

P.C. :

1. This Petition is directed against a judgment and order of the Appellate Bench of the Small Causes Court at Mumbai, dated 19th July, 2005. The Petitioner obtained a decree for eviction in respect of the tenanted premises situated on the fourth floor of a building at 28/d/ Police Court Lane, Fort, Mumbai. The decree for eviction was passed on 8thJanuary,1992. The Respondents set up an obstruction in execution. An Obstructionist Notice was taken out by the Petitioner which was made absolute by the executing Court on 12th June, 2002. An appeal was preferred against the order of the

executing Court by the Respondents and the appeal was allowed by the Appellate Bench by the impugned order dated 19th July, 2005. In these proceedings, the Learned Single Judge had on 12th April, 2006 directed that the matter shall be finally disposed of at the stage of admission and the matter was accordingly directed to be placed for hearing and final disposal in the third week of June 2006. Accordingly, learned counsel appearing for the contesting parties have been heard.

2. After the learned counsel have been heard and before the judgment is being dictated, counsel appearing on behalf of the First and Second Respondents has tendered a signed pursis recording that the Respondents only seek time to vacate the premises until 31st March, 2007. The First and Second Respondents who are the obstructionists are personally present before the Court. In view of the pursis which has been tendered before this Court, the order of the Appellate Bench shall have to be quashed and set aside and accordingly by consent is quashed and set aside. The Obstructionist Notice is made absolute in terms of the judgment and order of the executing Court dated 12th June, 2003. Counsel appearing for the Petitioner has expressed

an apprehension that the First and Second Respondents may create third party rights and further complicate the execution of the decree. Hence, it has been submitted that it would be appropriate if the Court Receiver is appointed as Receiver of the premises and the First and Second Respondents are appointed as agents of the Receiver. The suggestion is fair and deserves to be accepted. However, in order to enable the First and Second Respondents to have time to vacate the premises until 31st March, 2007, there shall be an order in the following terms :

i) By consent the judgment and order of the Appellate Bench of the Small Causes Court dated 19th July, 2005 is quashed and set aside;

ii) Obstructionist Notice is made absolute as directed by the Trial Judge of the Small Causes Court in the impugned judgment and order dated 12th June, 2003 in Obstructionist Notice 319 of 1992 in RAE & R Suit 1613/ 5169 of 1987;

iii) The Court Receiver is appointed as Receiver of the suit premises. The First and Second Respondents shall stand

appointed as agents of the Receiver without any security or royalty subject to the condition that the arrears of licence fee that are due and payable until 30th June, 2006 shall be paid in three equal installments, the first shall be paid on or before 31st July, 2006, the second on or before 31st August, 2006 and the third on or before 30th September, 2006;

iv) In the event that there is any single default in the payment of the installments as aforesaid or in the payment of the monthly compensation, the Receiver shall be at liberty to take over possession and hand over possession thereof to the Petitioner;

v) The Receiver shall hand over vacant possession of the premises to the Petitioner on 31st March, 2007.

The pursis is taken on record and marked as 'X'.

The Petition is accordingly disposed of.